1957.

File No. O. Prev of ex-communication/57

Legal Department –

A BRANCH

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91/57

Subject: P 13F

Opinions under the Bombay Prevention of Ex communication Act, 1949.

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C O N T E N T S.

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Ex-communication
1951.

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		Opinions under the Bombay Prevention of Ex-communication Act, 1949.	
1.	85 2/1/51.	Question whether Sec. 4 & (which makes a man criminally liable for any act which amounts to or is in furtherance of the ex-communication of any member of any community) would be ultra vires of the Constitution.	1-2.
2.	1616 25/1/51	Question whether there is any provision for exempting any community from the provisions of the Act and if so whether the proposal of the Collecr. of Amreli to exempt the Rabari and Vaghar communities from the provisions of the Act is legally feasible.	3-4.
3.	14035 5/7/51. 9001 7/6/51.	Sanction order under sec. 6 for the prosecution of Shri Gopalbhai Govanbhai and 5 others.	5-8.
4.	11483 20/7/51.	Sec. 6(b) Question regarding grant of sanction order -- Grievance of Shri Ramchandra Zaga Bhoi that 15 persons named by him (1) objected to his taking meals along with other members of his community at the house of Kalu Dagu Bhoi on 15-1-51 and pushed him out. The meal was arranged for the Utran Festival (2)objected to his taking part as a Panch in a panch meeting called on 16-1-51 to decide the complaint of	

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		of one Ukha Takdu and (3) them told him on 17-1-51 that they had excommunicated him and he may do what he likes.	9-10.
5.	15883 6/10/51	Sec. 6(b) Question regarding issue of sanction order -- Imposition of fines on three applicants by the Mhalan Shetkari Sabha, an association of Agris for alleged flouting of the said Sabha and expulsion on their failure to pay the fines.	11-12.
6.	9363 14/6/51.	Sec. 6(b) Question regarding issue of sanction order ----- Expulsion of Shri S.G. Lale from the Bhavsar Kshatriya Samaj as a result of the Resolution passed by the Special General meeting of the Samaj	13-14
7.	19433 4/12/51.	Excommunication ---- Sanction to prosecute for the offence of -----	15-18.

Rele.M.S.

Office of the R.L.A.

The contention that the Bombay Prevention of Ex-Communication Act, 1949 is inconsistent with Article 26 of the Constitution and is therefore void under Article 13 was fully considered by the Additional Secretary in the Statement of the case forwarded to the Attorney General of India and the Advocate General, Bombay with the D.O. letters No. 13888 dated the 1st December, 1949, when the Government of India had also expressed a similar doubt in the past. The contention does not appear to be sound.

Id/-

30/12.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 85 dated the

2nd Jan. 1951.

MSR.

Office of the R.L.A.

There being no provision in the Bombay Prevention of Excommunication Act, 1949 for exempting any community from the provisions thereof, the proposal of the Collector of Amreli to exempt the Rabari and Vagher communities from the provisions of that Act would not be legally feasible.

Id/-
22/1.
Remembrancer of Legal Affairs.

U.R. to R.D. No. 1616, dated the
2nd January 1951.

MSR.

OFFICE OF THE R.L.A.

The first para. should be altered to read as under:-

"Whereas

1. Shri Gopalbhai Govanbhai
2. Shri Bhikhabhai Ramjibhai
3. Shri Nagindas Jagubhai
4. Shri Parbhubhai Kunverji
5. Shri Zinabhai Pursottamdas and
6. Shri Khushaldas Lalbhai

the President, Secretary and members of the Samasta Mali Panch (Chorasi Panch) of Surat, are alleged to be wrongfully depriving,

1. Shri Chhotubhai Nathubhai
2. Shri Nanubhai Chhotubhai
3. Shri Maganlal Chhotubhai
4. Shri Thakorbhai Chhotubhai
5. Shri Vallabhbhai Chhotubhai

of their right to use the caste utensils and the caste vadis and they are alleged to be doing so in furtherance of an alleged excommunication of the above mentioned five persons made about 13 years ago by the Samasta Mali Panch"

The rest of the draft is in order.

Attention however is invited to the fact that according to the letter of the alleged excommunicated persons they were denied use of the utensils and the vadi in December 1949. Therefore, the Act complained

of which was in furtherance of the excommunciation was done in December 1949. That being so, the Court will not take cognizance of that offence as one year has passed. (Section 6(a) of the Act) unless it is prepared to hold that such refusal is in the nature of a continuing offence.

Id/-

5/6.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 9001, dated the

7th June 1951.

MSR.

Legal Department.

The grievance of the applicant Shri Ramchandra Zaga Bhoi is that the fifteen persons named by him

(1) objected to his taking his meals along with other members of his community at the house of Kalu Dagu Bhoi on 15-1-51 and pushed him out. The meal was arranged for the Utran Festival;

(2) objected to his taking part as a panch in a panch meeting called on 16-1-51 to decide the complaint of one Ukha Tukdu;

(3) told him on 17-1-51 that they had excommunicated him and he may do what he likes.

2. Now before a person can be said to be excommunicated within the meaning of the word 'excommunication' used in the Bombay Preventive of Excommunication Act, 1949, (Bombay Act No.XLII of 1949) it should be shown firstly that he has been expelled from the community of which he is a member, and secondly that the said expulsion had deprived him of rights and privileges which are legally enforceable by a suit of civil nature by him or on his behalf as a such member.

3. Now the facts do not show that he has been expelled from the community. The facts

show that there were two factions in the community apparently arising out of the fact that a sum of Rs. 40/- which ought to have gone to the community as a whole was misappropriated by the applicant Shri Ramchandra Bhoi and others. The applicant alleges that those two factions have now composed their differences but the applicant who was not present at the time the differences were composed has been ignored. Even if that be true, it cannot be said that there has been an expulsion from the community. Besides the three grievances of the applicant do not amount to deprivation of rights and privileges which are enforceable by a suit of a civil nature.

4. This is, therefore, not a fit case for grant of a sanction under section 6(b) of the Act.

Id/-

Additional Secretary to Government.

U.R. to H.D. No. 11483, dated the

20th July 1951.

MSR.

Legal Department.

It appears that the applicants (1) Dhaklya Hindya Kadu, (2) Ragho Giva Kadu and (3) Savlya Kandya Gharat have been fined Rs. 50/-, 20/- and 20/- respectively by the Mhalan Shetkari Sabha which is an association of Agris to which community the applicants belong. These fines were imposed for the alleged flouting of the said Sabha and on their failure to pay the fines they have been expelled from the said Sabha. It does not appear tht the expulsion has deprived them of any rights and privileges which are legally enforceable by a suit of a civil nature. Ragho and Savlya in their statements do not speak of the deprivation of any such rights. Dhaklya in his first statment does not speak of the deprivation of such rights and in his subsequent supplementary statemen only complains about his cousin having been denied a girl in marriage because of the expulsion, which is not a right or privilege enforceable by a suit of a civil nature. That being so there is no prima facie case made out justifying the issue of sanction under section 6(b) of the Bombay Prevention of Excommunication Act, 1949.

Id/-

Additional Secretary to Government

U.R. to H.D. No. 15883, dated the

6th October 1951.

MSR.

OFFICE OF THE R.L.A.

It appears from the papers that Shri S.G. Lale was expelled on 12th April 1939 from the Bhavsar Kshatriya Samaj as a result of a resolution passed by the special general meeting of the Samaj held on that day. In that meeting Shri Lale was present and was called upon to explain certain matters and on his failure to comply the above resolution was passed. The resolution provided that the expulsion was to remain effective only so long as Shri Lale failed to comply with the two demands of the Samaj mentioned in the resolution.

In November 1941 the Samaj came to be registered under the Societies Registration Act, 1860 (Act No. XXI of 1860).

The grievance of Mr. Lale is that although the resolution of his expulsion has been cancelled by the Samaj by a subsequent resolution dated 2nd July 1950, that cancellation is more a show than a reality because although he has applied again for membership of the Samaj no form of membership has been given to him and no rights of membership are still available to him. He wants to prosecute the President and Secretary of the Samaj for an offence under section 4 of the Bombay Preventive of Excommunication Act, 1949 (Bom. Act XLII of 1949) as having done acts in furtherance of excommunication by refusing to supply him membership forms etc.

The case can fall under the Bombay Prevention of Excommunication Act, 1949, only if the Samaj is 'community' as defined by the Act and expulsion of Shri Lale amounts to "excommunication" as defined by the Act. Onneither of these points is the matter free from doubt. Shri Lale's application to the District Magistrate distinguished the Samaj from the Bhavsar Kshatriya community to which he belongs. The Samaj is a society registered under Act XXI of 1860 and is not a community as defined in the said Act. No sanction under Section 6(b) of Bombay Act No. XLII of 1947 can be granted in this case.

Sd/- J.R. Dhurandhar.

R. L. A.

U.R. to H.D. No. 9363, dated the 14-6-1951.

MSR.

Excommunication - Sanction to prosecute for the offence of.

"Excommunication" as defined in the Bombay Preventive of Excommunication Act, 1949, means the expulsion of a person from any community of which he is a member depriving him of rights and privileges which are legally enforceable by suit of a civil nature by him or on his behalf as such member. The Act is designed to protect only legally enforceable rights and it is only when civil rights are infringed that the act of excommunication is made penal (vide Addl. Secretary's opinion No. 226-L dated 14-10-1949). From the facts stated in the P.S.'s note, it appears that most of the rights which are infringed are social rights which are not enforceable in a court of law. Courtsdo not enforce privileges which are merely of a social or religious nature. Excommunication, which does not deprive the member of his civil rights, is not punishable (Addl. Secretary's opinion No. 3033 dated 17-2-1951). It is true that Shri Gangaram Nathu Gharat has stated (at p. 30) that he is not admitted in the temple. Right of worship is a civil right and if what Shri Gharat means is that he is denied that right on account of his excommunication an offence under the Act would be accommitted. But the evidence in support of the alleged denial of such right of worship is very meagre, for none of the other allegedly excommunicated persons states of his being denied the right of worship is Shri Amrit Ambaji Gharat (p. 47

who however only speaks of absence of invitation to the temple. Therefore the evidence in the case is too meagre to make out a case that these persons have been deprived of rights and privileges enforceable by a suit of civil nature.

2. Under the circumstances in the absence of further materials showing that these persons have been deprived of rights and privileges enforceable by a suit of civil nature, a sanction under section 6(b) of the Act would not be justified. If however certain persons are being forced to pay fines such forced exaction may amount to an offence of extortion under section 383 of the Indian Penal Code. The District Magis-trate may be asked to consider whether prosecution for extortion can be launched against the alleged offenders.

Id/-

3/12.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 19433, dated the

4th December 1951.

MBr.